

Appl. No. 10/713,636
Atty. Docket No. CM2567C
Amdt. dated 01/18/2005
Reply to Office Action of 10/18/2004
Customer No. 27752

REMARKS

Application Amendments

Claims 1-8, 10-15 are pending in the present application. Claim 9 has been canceled. No additional claims fee is believed to be due.

Claims 1-5, 7, and 10-15 have been amended as shown above. Support for the amendment to claim 1 can be found in the original claim and at page 4, line 23 to page 5, line 2 of the specification, and page 13, line 19. Support for the amendments to claims 2-5 can be found in the original claims and at page 4, lines 1-21, and at page 5, lines 33-35 of the specification. Support for the amendment to claim 7 can be found at page 12, lines 31-34 of the specification. Support for the amendments to claims 10-15 can be found in the original claims and at page 15, line 14 to page 17, line 19 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejections Under 35 USC 112, Second Paragraph

Claims 1-15 are rejected under 35 USC 112, second paragraph, as being indefinite.

In claim 1, the Examiner first notes that a "composition" without a second component is recited, and that claim 1 is drawn to a polymer per se. Second, the Examiner states that claim 1 is unclear and ambiguous with respect to the formula claimed in B. Finally, the Examiner requests correction in claim 1 of "X" and "Z" to "x" and "z". Claim 1 has been amended as shown above to recite a composition comprising "one or more surfactants" in addition to the polysiloxane, to clarify the claimed aminofunctional polysiloxane B (now, as currently amended, "(A)"), and to correctly recite "x" and "y".

In claims 2-4, the Examiner states that the recited "further comprises" language is unclear. Claims 2-4 have been amended as shown above, and as suggested by the Examiner, to more particularly point out and distinctly claim Applicants' composition.

In claims 3-4, the Examiner states that there is improper antecedent basis for the recitation of R² as "propyl or butyl". Claims 1 and 3-4 have been amended as shown above so that R² of claims 3-4 is within the scope of R² of claim 1.

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Claims 1-4 have been amended as shown above, thus, it is believed that the present rejections have been obviated.

Provisional Rejections Under 35 USC 102(e) Over Co-Pending US Application No. 10/460,068

Claims 1-2 and 5-15 are provisionally rejected under 35 USC 102(e) as being anticipated by co-pending US Application No. 10/460,068 ("the '068 application") which has a common assignee with the present application. The Examiner asserts that the '068 application, based upon its earlier effective US filing date, would constitute prior art under 35 USC 102(e) if it ever is published under 35 USC 122(b) or is patented. The Examiner further asserts that Applicants' claimed aminofunctional siloxanes are within claim 1 of the '068 application when, in the formula of claim 1 of the '068 application, B and C are zero (*i.e.*, when y and t are zero). Thus, presumably, the Examiner concludes that the '068 application anticipates Applicants' claimed compositions. Applicants respectfully traverse the present rejection based on the following comments.

The '068 application fails to disclose each and every limitation of Applicants' compositions of claim 1 and, thus, the '068 application is not anticipatory. As currently amended, Applicants' claim 1 is directed to a hair care composition comprising one or more surfactants and (a) an *aminofunctional polysiloxane (A)* comprising the alternating units described, and (b) *mixtures* of the *aminofunctional polysiloxane (A)* and a *terminal aminofunctional polysiloxane (B)* according to the formula described. The '068 application discloses an aminofunctional polysiloxane of a broad formula which encompasses the terminal aminofunctional polysiloxane (B) (referred to in previously presented claims as "(A)") of Applicants' claim 1. However, the hair care compositions of Applicants' claim 1 require the aminofunctional polysiloxane (A), which is not disclosed in the '068 application. Alternatively, the hair care compositions of Applicants' claim 1 require a *mixture* of aminofunctional polysiloxane (A) and terminal aminofunctional polysiloxane (B). Applicants' hair care compositions, containing the claimed polysiloxanes having the amino group positioned at the terminal position of the polysiloxane chain, provide improved initial conditioning performance along with improved clean feel to hair. Accordingly, the '068 application does not teach each and

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every limitation of Applicants' claim 1, as well as claims 2 and 5-15 which directly or indirectly depend from claim 1.

Additionally, Applicants' claims 1-2 and 5-15 are not obvious over the '068 application because, under 35 USC 103(c), the '068 application is not available as 102(e) prior art for use under 35 USC 103(a). The subject matter of the '068 application and Applicants' presently claimed invention were, at the time the present invention was made, both owned by The Procter & Gamble Company ("P&G") or subject to an obligation of assignment to P&G (as discussed below).

As a result, Applicants' claims 1-2 and 5-15 are novel and nonobvious over the '068 application.

Double Patenting Rejections

Claims 1-15 are rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1 and 4-19 of co-pending US Application 10/460,068 ("the '068 application"). The Examiner asserts that while the claims of the '068 application and the present application are not identical, they are not patentably distinct. Applicants respectfully traverse the present rejection based on the following comments.

- A. The '068 application and the present invention were, at the time the present invention was made, both owned by P&G or subject to an obligation of assignment to P&G.

The subject matter of the '068 application and Applicants' presently claimed invention were, at the time the present invention was made, both owned by The Procter & Gamble Company ("P&G") or subject to an obligation of assignment to P&G.

At the time of the invention of the '068 application, the named inventors were all employees of P&G. On October 8, 2001, the named inventors of the '068 application made an assignment of the invention of the '068 application to P&G. This assignment was recorded by the USPTO on October 14, 2003, at reel/frame: 014045/0645. In this assignment, the named inventors acknowledge that they had an obligation at the time the invention was made to assign the invention to P&G.

At the time of the invention of the present application, the named inventors were both employees of P&G. On May 15, 2001, the named inventors of the present

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Customer No. 27752

application made an assignment of the invention of the present application to P&G. This assignment was recorded by the USPTO on March 17, 2004, at reel/frame: 014435/0113. In this assignment, the named inventors acknowledge that they had an obligation at the time the invention was made to assign the invention to P&G.

Accordingly, under 35 USC 103(c), the '068 application is not available as 102(e) prior art for an obviousness rejection under 35 USC 103(a).

B. The claims of the present application are distinct from the claims of the '068 application.

Additionally, the claims of the present application, as currently amended, are nonobvious over and patentably distinct from the claims of the '068 application. As discussed above, Applicants' claim 1 is directed to a hair care composition comprising one or more surfactants and (a) an *aminofunctional polysiloxane (A)* comprising the alternating units described, and (b) *mixtures* of the *aminofunctional polysiloxane (A)* and a *terminal aminofunctional polysiloxane (B)* according to the formula described. In contrast, the claims of the '068 application are directed to a hair care composition comprising an aminofunctional polysiloxane of a broad formula which encompasses the terminal aminofunctional polysiloxane (B) of the present invention. No claim of the '068 application is directed to a composition comprising the aminofunctional polysiloxane (A), which comprises the alternating units described in the present application, alone or mixed with the terminal aminofunctional polysiloxane (B).

Therefore, the claims of the present application are patentably distinct from the claims of the '068 application. Accordingly, Applicants respectfully request that the present obviousness-type double patenting rejection be withdrawn.

CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-8 and 10-15.

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Respectfully submitted,

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Signature

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